

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
FOURTH REGION**

TRI COUNTY BUILDING SUPPLIES, INC.¹

Employer

and

Case 4–RC–19857

TEAMSTERS UNION LOCAL 331,
a/w INTERNATIONAL BROTHERHOOD
OF TEAMSTERS, AFL–CIO²

Petitioner

DECISION AND DIRECTION OF ELECTION

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, as amended, a hearing was held before a hearing officer of the National Labor Relations Board.

Pursuant to the provisions of Section 3(b) of the Act, the Board has delegated its authority in this proceeding to the undersigned.

Upon the entire record in this proceeding,³ the undersigned finds:

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.

2. The Employer is engaged in commerce within the meaning of the Act and it will effectuate the purposes of the Act to assert jurisdiction herein.

3. The labor organization involved claims to represent certain employees of the Employer.

¹ The Employer's name appears as amended at the hearing.

² The Petitioner's name appears as amended at the hearing.

³ The Hearing Officer granted a joint motion to make, as part of the record herein, the evidence adduced during the consolidated hearing in Cases 4–RC–19473, 4–RC–19474 and 4–RC–19475.

4. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.

5. The Employer, a New Jersey corporation, is engaged in the wholesale and retail sale of building supplies at various facilities in the State of New Jersey. The Petitioner seeks to represent a unit of approximately 20 full-time and regular part-time truck drivers, yard workers, forklift operators, equipment operators, laborers, warehouse workers, checker, shipper, and counter staff employees employed by the Employer at its Reading Avenue, Cape May Court House, New Jersey Branch ("Reading Avenue Branch"). While the Employer does not contest the composition of the unit, it disagrees as to the scope.⁴ The Employer contends that the appropriate unit consists of the employees at all of its New Jersey Branches. In the alternative, the Employer asserts that the smallest appropriate unit consists of its employees employed at both the Reading Avenue Branch and the Stites Avenue, Cape May Court House, New Jersey Branch ("Stites Avenue Branch"). Although the Reading Avenue and Stites Avenue Branches were found to be separate appropriate units in Case 4-RC-19475, the Employer contends that they are no longer appropriate because operational changes have been made since the prior determination. There are approximately 20 employees at the Reading Avenue Branch and nine employees at the Stites Avenue Branch.

A Decision and Direction of Election was issued in Cases 4-RC-19473, 4-RC-19474 and 4-RC-19475 on September 22, 1998,⁵ finding, *inter alia*, that the Employer's four branches located in Mt. Holly, Pleasantville, Cape May Court House – Reading Avenue and Cape May Court House – Stites Avenue each constituted a separate appropriate unit. The Employer filed a Request for Review of the Decision and Direction of Election. On September 3, 1999, the Board issued its Decision on Review and Order. The Board majority⁶ affirmed the Decision, noting that there was insufficient evidence to establish frequent and regular employee contact and interchange between the drivers and yard workers of the different branches. The Board majority found, based on the analysis set forth in the Decision, that the evidence failed to rebut the presumption that the branches were separate appropriate units. As to the conclusion that the Cape May Court House – Reading Avenue and Cape May Court House – Stites Avenue Branches constituted separate appropriate units, the Board majority found that this issue was not properly before it because the Petitioner, which sought a single unit among the two Cape May Court House Branches, did not file a request for review of the conclusion that they are separate appropriate

⁴ The parties stipulated that Gary Rousseau should be excluded from any unit found appropriate as a supervisor and that shipper Joseph Calamito and forklift operator/yard worker Steven Witkowsky should be included in any unit found appropriate herein.

⁵ In the transcript of the hearing in the instant case, the hearing officer is erroneously reported as stating that the Decision in Cases 4-RC-19473, 4-RC-19474 and 4-RC-19475 issued on December 22 rather than September 22, 1998.

⁶ Chairman Truesdale and Member Liebman. Member Hurtgen dissented.

units. However, the Board majority stated that, had the issue been properly raised, it would have found that each of the branches was an appropriate administrative unit and a “subdivision” within the meaning of Section 9(b) of the Act. The Employer filed a Request for Reconsideration of the Board’s Decision. The Board majority denied the request on October 5, 1999.

On October 16, 1998, the Regional Office conducted an election among the employees in the four separate branches, but impounded the ballots pending the Board’s Decision on Review. The impounded ballots were opened and counted on September 16, 1999. The employees in the Stites Avenue Branch unit voted in favor of representation and, after the Employer’s Objections to the election in that unit were dismissed, the Petitioner was certified as the bargaining representative of the Stites Avenue Branch unit on October 26, 1999. With respect to the Reading Avenue Branch unit, after opening and counting determinative challenged ballots, the Petitioner did not receive a majority of the votes cast and the results of the election was certified on December 8, 1999.

The record shows that Patrick Finnerty, the Employer’s General Manager, is responsible for overseeing the everyday operation of the Employer’s branches and its mechanic facility. Finnerty testified that the Employer has five branches, Pleasantville, Mt. Holly, Egg Harbor City, Stites Avenue and Reading Avenue. However, Finnerty also testified that the Cape May Court House Branch consisted of two facilities, Reading Avenue and Stites Avenue. The Mt. Holly and Egg Harbor branches consists of two facilities each. The Mt. Holly and Egg Harbor branches have their own branch managers. At the time of the prior hearing, the Pleasantville Branch consisted of two facilities. Pleasantville now consists of one facility. Like the other branches, Pleasantville has always had a Branch Manager.

At the time of the prior Decision and Direction of Election, James McMichael served as Branch Manager of the Reading Avenue Branch and Edward Fowler served as Branch Manager at the Stites Avenue Branch. Edward Fowler has since left the company and, in approximately July 1999, McMichael became responsible for both the Reading Avenue and Stites Avenue Branches. While employees at the Reading Avenue and Stites Avenue Branches receive the same benefits, McMichael now exercises the authority to hire, fire, discipline, grant raises and promote employees at both locations.

The Reading Avenue and Stites Avenue Branches are three blocks apart. The Reading Avenue Branch sells wood roofing materials and treated and “hem-fir” lumber. About 85 to 90 percent of its sales are to construction contractors. The Stites Avenue Branch sells sheet rock, asphalt roofing shingles and “dry” (untreated) lumber. About 85 to 90 percent of the Stites Avenue Branch’s sales are retail, to the ultimate consumer. Customers who purchase materials at either the Reading Avenue or Stites Avenue location may pick up the materials at either of the locations.

Keith Hickman, a driver, permanently transferred from the Reading Avenue Branch to Stites Avenue about four months before the hearing in the instant case. The record does not reveal the reason for his transfer or who requested it. There have been no other permanent transfers within the two years prior to the hearing. About “90 percent of the time,” according to McMichael, an individual employed at one site is working temporarily at the other. Thus,

Veronica Wilson, an employee hired at the Reading Avenue Branch, was, at the time of the hearing, working at the Stites Avenue Branch, substituting for a Stites Avenue employee who was out on disability. When the employee for whom Wilson was substituting returns to work, Wilson will return to the Reading Avenue Branch. Wilson was the only employee specifically identified at the hearing who was working temporarily at either of the branches at issue. McMichael testified that if a driver at the Reading Avenue Branch called out sick and Reading Avenue was unable to cover for him or her, he might move a driver from the Stites Avenue Branch to the Reading Avenue Branch. He further testified, “we swap drivers back and forth every day.” Daniel Mullen, a driver employed at the Reading Avenue Branch, testified that he has never been asked to work at the Stites Avenue Branch in the two years prior to the hearing. Reading Avenue driver Robert Rush also testified that he has never substituted for a Stites Avenue Branch driver for the ten months he has worked for the Employer. He further testified that he occasionally picks up inventory at the Stites Avenue Branch, estimating that he does so about once every other week. Reading Avenue driver Reginald Clement testified that, in the nine months prior to the hearing, he worked at the Stites Avenue Branch twice. He was once assigned to make deliveries for a Stites Avenue driver and, on a second occasion, drove a boom truck from the Stites Avenue Branch. A boom is a large crane that lifts heavy building materials including, for example, lifting sheet rock to the floor of a multi-floor building where the sheet rock is being installed. The Employer owns only one boom and it is located only at the Stites Avenue Branch.

The Employer’s contention that an Employer-wide unit is the smallest appropriate unit was fully considered and rejected by the undersigned in the original Decision and Direction, by the Board on Review and again in response to the Employer’s Request for Reconsideration. As to the Employer’s alternative argument, that the Reading Avenue Branch is not appropriate and that a multi-location unit consisting of the Reading and Stites Avenue Branches is the smallest appropriate unit, this, too, was decided in the prior proceeding. Moreover, the prior representation proceeding resulted in the conducting of elections, including an election in the Stites Avenue unit where the Petitioner was certified as the collective bargaining representative for that unit.

The only change in the Employer’s operation since the Decision and Direction of Election is that McMichael, who was once the Branch Manager of the Reading Avenue Branch, is now responsible for both the Reading Avenue and the Stites Avenue Branches. This change does not warrant a finding that the unit is no longer appropriate. *Midstate Telephone*, 179 NLRB 85, 86 (1969). Nor does the additional evidence adduced at the instant hearing. While Branch Manager McMichael testified that “we swap drivers back and forth every day” between the Reading and Stites Avenue Branches, the record also shows that Reading Avenue Driver Mullen has never been asked to work at Stites Avenue, Reading Avenue Driver Rush’s involvement with the Stites Avenue Branch is limited to picking up inventory there about once every other week and Reading Avenue Driver Clement drove Stites Avenue trucks only twice in the nine months prior to the hearing herein. There was only one permanent transfer between the Branches in the two years prior to the hearing and no record evidence showing the reason for this transfer or at whose request the transfer was made. *Renzetti’s Market*, 238 NLRB 174, 175 & fn. 8 (1978). Only one employee — Veronica Wilson — temporarily transferred from Reading Avenue to Stites. She will return to the Reading Avenue Branch when the employee for whom she is substituting returns to work. Accordingly, I find that the evidence is insufficient to establish that there is

frequent and regular employee contact and interchange between the different branch units, as contended by the Employer. See *Renzetti's Market*, supra, 238 NLRB at 175.

Based on the foregoing, I find that the following employees of the Employer constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

All full-time and regular part-time truck drivers, yard workers, forklift operators, equipment operators, laborers, warehouse workers, checker, shipper and counter staff, employed by the Employer at its 14 East Reading Avenue, Cape May Court House, New Jersey Branch, excluding office clericals, outside sales persons, guards and supervisors as defined in the Act.

DIRECTION OF ELECTION

An election by secret ballot shall be conducted by the undersigned among the employees in the units found appropriate at the time and place set forth in the notices of election to be issued subsequently,⁷ subject to the Board's Rules and Regulations. Eligible to vote are those in the units who were employed during the payroll period ending immediately preceding the date of this Decision, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off. Also eligible are employees engaged in an economic strike which commenced less than 12 months before the election date and who retained their status as such during the eligibility period and their replacements. Those in the military services of the United States may vote if they appear in person at the polls. Ineligible to vote are employees who have quit or been discharged for cause since the designated payroll period, employees engaged in a strike who have been discharged for cause since the commencement thereof and who have not been rehired or reinstated before the election date, and employees engaged in an economic strike which commenced more than 12 months before the election date and who have been permanently replaced. Those eligible shall vote whether or not they desire to be represented for collective bargaining purposes by

**TEAMSTERS UNION LOCAL 331, a/w INTERNATIONAL
BROTHERHOOD OF TEAMSTERS, AFL-CIO**

LIST OF VOTERS

⁷ Your attention is directed to Section 103.20 of the Board's Rules and Regulations, a copy of which is enclosed. Section 103.20 provides that the Employer must post the Board's official Notice of Election at least three full working days before the election, excluding Saturdays and Sundays and that its failure to do so shall be grounds for setting aside the election whenever proper and timely objections are filed.

In order to assure that all eligible voters may have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties to the election should have access to a list of voters and their addresses which may be used to communicate with them. *Excelsior Underwear, Inc.*, 156 NLRB 1236 (1966); *NLRB v. Wyman-Gordon Company*, 394 U.S. 759 (1969). Accordingly, it is hereby directed that within **7** days of the date of this Decision **3** copies of an election eligibility list, containing the **full** names and addresses of all the eligible voters, shall be filed by the Employer with the undersigned who shall make the list available to all parties to the election. *North Macon Health Care Clinic*, 315 NLRB 359, 361 (1994). The list must be clearly legible, and computer-generated lists should be printed in at least 12-point type. In order to be timely filed, such list must be received in the Regional Office, One Independence Mall, 615 Chestnut Street, Seventh Floor, Philadelphia, Pennsylvania 19106, on or before **February 25, 2000**. No extension of time to file this list shall be granted except in extraordinary circumstances, nor shall the filing of a request for review operate to stay the requirement here imposed.

RIGHT TO REQUEST REVIEW

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, Franklin Court, 1099 14th Street, NW, Room 11613, Washington, D.C. 20570. This request must be received by the Board in Washington by **March 3, 2000**.

Dated February 18, 2000

at Philadelphia, PA

/s/ Dorothy L. Moore-Duncan
DOROTHY L. MOORE-DUNCAN
Regional Director, Region Four

440-1700
440-1760-6200
750-0150

JMD: G:\R04COM\Decision Writing\Multi-Location Units\D0419857.doc